

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DEBANY RIVERA, Individually
and as Heir to the Estate of Juan
Javier Martinez, Jr., Deceased;
and JUAN JAVIER MARTINEZ,
SR.

Plaintiffs

v.

Civil Action No. 4:20-cv-01881

CITY OF PASADENA;
PASADENA INDEPENDENT
SCHOOL DISTRICT; LONNIE
SMITH, II; ZACHARY MABES;
JESUS PAZ; JOSEPH
LOCKMONDY; MARK HARDIN;
DONNA WRIGHT; PAUL
BENNETT; and [FNU] DOVER

Defendants

PLAINTIFFS' RESPONSE TO PASADENA
INDEPENDENT SCHOOL DISTRICT AND LONNIE
SMITH, II'S MOTION TO DISMISS

Plaintiffs file this response in opposition to Defendants Pasadena Independent School District and Lonnie Smith, II's (the PISD Defendants) Motion to Dismiss Plaintiff's Original Petition, Doc. 20. **The parties agree that the motion is moot**¹ because Plaintiffs filed an amended complaint on

¹ Plaintiffs' counsel has confirmed this agreement with the PISD Defendants' counsel by phone. See certificate of conference attached to this motion.

August 21, 2020, Doc. 25, addressing the issues raised in the PISD Defendants' motion, and the PISD Defendants have filed an unopposed motion requesting an extension of time until September 11, 2020, to file a response to the amended complaint. Doc. 26.

I. NATURE AND STAGE OF PROCEEDINGS

Plaintiffs filed this section 1983 suit against the City of Pasadena, PISD, and several of their respective police officer employees arising from the 2018 death of Juan Javier Martinez, Jr. at the hands of the officers. The suit was filed in state court, but was removed by the City of Pasadena on May 29, 2020. The Court granted the City's Rule 12(b)(6) motion to dismiss on July 28, 2020, Doc. 22, granting Plaintiffs leave to amend by August 21, 2020. Doc. 22.

The PISD Defendants filed their Motion to Dismiss Plaintiffs' Original Petition on July 24, 2020, Doc. 20, before the ruling on the City's motion. PISD raised the following grounds: (1) Plaintiffs did not make specific allegations against PISD's employee, Officer Smith; (2) Plaintiffs did not sufficiently plead an action against PISD under *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658 (1978); and (3) Plaintiffs failed to adequately plead a claim against PISD for failure to train or supervise. Pursuant to the Court's order extending time, Doc. 24, the PISD Defendants' motion is currently docketed for submission on September 4, 2020.

On August 21, 2020, as permitted by the Court, Plaintiffs filed their First Amended Original Complaint. Doc. 25. In addition to addressing the deficiencies found by the Court in its order granting the City’s motion, Plaintiffs addressed the issues raised in the PISD Defendants’ motion as well. Plaintiffs made specific allegations regarding Officer Smith, Doc. 25 at ¶ 25–27, 29–30, 43, and made specific allegations of unconstitutional policies, practices, and customs, and inadequate training and supervision, enacted by PISD’s policymakers. Doc. 25 at ¶ 51–59.

The PISD Defendants agree that the amended complaint renders their motion to dismiss moot, and Plaintiffs are unopposed to Defendants’ motion for an extension of time to file a response to Plaintiffs’ amended complaint. Doc. 26.

II. ARGUMENT

Because Plaintiffs’ First Amended Original Complaint includes substantive revisions directly addressing the issues raised by the PISD Defendants’ motion to dismiss, the motion to dismiss is moot. *See Agyei v. Endurance Power Products, Inc.*, 198 F.Supp.3d 764, 776 (S.D. Tex. 2016) (recognizing that an amended complaint containing “substantive revisions . . . mooted the motion to dismiss” under Rule 12(b)(6)); *Pension Advisory Group, Ltd. v. Country Life Insurance Co.*, 771 F.Supp.2d 680, 689 n.1 (S.D. Tex. 2011) (recognizing that “the filing of an amended complaint would generally render

pending Rule 12(b)(6) motions to dismiss moot,” except where the distinctions “are not significant”). As stated above, the PISD Defendants agree that their motion is moot, and has begun to address the amended complaint by requesting additional time to respond to it. Doc. 26. The PISD Defendants’ motion to dismiss should be denied as moot.

III. PRAYER

Plaintiffs respectfully request that the PISD Defendants’ motion to dismiss, Doc. 20, be denied as moot.

DATED September 4, 2020

Respectfully Submitted,

GABEL LAW PLLC

/s/ Christopher Gabel

Christopher Gabel

State Bar No. 24089408

Federal ID No. 2373978

720 Rusk St.

Houston, Texas 77002-2713

chris@gabellawpllc.com

Telephone: 713-429-4477

Facsimile: 713-429-5546

Attorney for Plaintiffs

OF COUNSEL:

HUMPHREY LAW PLLC

/s/ Brian Humphrey

Brian Humphrey

State Bar No. 24074456

Federal ID No. 2202829

TC Energy Center

700 Louisiana, Suite 3950

Houston, Texas 77002

brian@htx-law.com

Telephone: 713-364-2616

Facsimile: 832-827-3299

ROBERT G. TAYLOR, II, P.C.

/s/ Robert G. Taylor, III

Robert G. Taylor, III (Trey)

State Bar No. 19721100

Federal ID No. 18950

2040 North Loop West, Suite 104

Houston, Texas 77018

ttaylor@rgtaylorlaw.com

Telephone: 713-654-7799

Facsimile: 713-654-7814

CERTIFICATE OF CONFERENCE

I hereby certify that I conferred with counsel for Defendants Pasadena Independent School District and Officer Lonnie Smith, II, and they are agreed that their motion to dismiss, Doc. 20, is moot and are unopposed to its denial as such.

/s/ Brian Humphrey

Brian Humphrey

CERTIFICATE OF SERVICE

I hereby certify that this document was served on all attorneys of record and/or unrepresented parties in accordance with Rule 5 and Local Rule 5.5 as indicated below on June 29, 2020.

William S. Helfand

Norman Ray Giles

LEWIS BRISBOIS BISGAARD & SMITH,
LLP

24 Greenway Plaza, Suite 1400

Houston, Texas 77046

Via ECF

Larry Simmons

Carmen Jo Rejda-Ponce

GERMER PLLC

America Tower

2929 Allen Parkway, Suite 2900

Houston, Texas 77019

Via ECF

/s/ Brian Humphrey

Brian Humphrey